



NEW YORK STATE DEPARTMENT OF TRANSPORTATION

**Policy & Procedures for
Federal Transit Administration
(FTA)
Program Related Procurements**

**Policy and Planning Division
Office of Integrated Modal Services
Public Transportation Bureau
www.dot.ny.gov/public-transportation
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I. POLICY

The New York State Department of Transportation (NYSDOT), as the designated recipient of federal funds apportioned to New York State by the Federal Transit Administration (FTA), administers certain programs on behalf of the FTA, and therefore is responsible for oversight of the procurement of commodities, services and technology that use FTA assistance program funds under federal guidelines issued by the FTA.

In addition to administering the required FTA procurement oversight, the Department uses the most recently published NYS Procurement Guidelines located at: (<http://www.ogs.ny.gov/BU/PC/Docs/Guidelines.pdf>) prepared by the State Procurement Council as the guiding document for all procurements of commodities, services and technology that utilize state funding.

The option add-on pricing policy on OGS bus and other piggybacking purchase opportunities, deemed allowable, will be subject to an allowance of up to but not to exceed ten percent (10%) additional cost for non-published options over the base price of the vehicle acquisition plus published options. Options cannot be a cardinal change¹ to the original procurement and are subject to NYSDOT approval prior to purchase.

As a State, our own procurement procedures reflect applicable state law and regulations that provides a process that ensures competitive procurement and conform to applicable federal law where required. Having said that, NYSDOT, when utilizing federal funding, must comply with 49CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts and create a level playing field for DBE's to compete. In addition NYSDOT must adhere, at minimum, to the following federally mandated requirements.

1. Five (5) year contract term limitations on revenue vehicle purchases (7 year for rail);
2. Competition;
3. Prohibitions against geographic preferences;
4. Procurement of architectural and engineering (A&E) services;
5. Awards to responsible contractors.

In cooperation with NYSDOT Legal & Contract Management, the Public Transportation Bureau under the Office of Integrated Modal Services is the designated bureau responsible for the interpretation, guidance and oversight of the federal procurement rules and regulations associated with programs and their grantees funded under the FTA.

The procedures used as guidance are outlined in the "NYSDOT Procurement Guidance Checklist" located on our website at: <https://www.dot.ny.gov/divisions/policy-and-strategy/public-trans-respository/procurementchecklist.pdf> This document prepared by the NYSDOT Public Transportation Bureau in accordance with federal laws, regulations and guidance as prescribed by the FTA under the most current version of FTA Circular Guidance 4220, "Third Party Contracting Requirements"

¹ A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Reference FTA C 4220.1F

(http://www.fta.dot.gov/documents/FTA_Circular_4220.1F.pdf) and the most recent FTA Master Agreement. The Master Agreement contains standard terms and conditions governing the administration of projects supported with federal financial assistance awarded by the FTA through an executed Grant Agreement or Cooperative Agreement with the designated recipient (NYSDOT). Also consulted is the FTA Best Practices Procurement Manual-BPPM located at:

(http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html) that provides additional procurement assistance, contract clauses and language provisions.

Each FTA recipient is responsible for managing its programs and projects in compliance with applicable Federal requirements, and the FTA is responsible for ensuring that recipients comply with those requirements. This also applies to each subrecipient, under an FTA grant or cooperative agreement that enters into contracts with other parties financed with FTA assistance. NYSDOT, as the Designated Recipient of FTA Section funds, must ensure that subrecipients of these funds also comply with those requirements.

Each recipient and subrecipient must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.

II. FEDERAL PROGRAM PROCUREMENT PROCEDURES

The following procedures is an abstract of the more robust checklist referenced above. Please refer to the checklist for the most comprehensive detail of the procedures, guidance and oversight in place.

The procedures NYSDOT and their subrecipients will follow are outlined as “Steps” below and used during the course of the procurement process when utilizing FTA assistance program funding.

When the OGS State contract it used it has an “Extension of Use” clause which allows State Agencies, governmental jurisdictions (in-state or out-of-state) and non-profit organizations (in-state only) to use the contract with prior written approval of the NYSDOT Public Transportation Bureau.

The federal programs covered under these procedures include those funded under FTA Section 5310 and Section 5311/5316/5317, as well as FTA Sections 5303 and 5304 (planning grants).

STEP 1 – Grantee Information – The gathering of grantee information that includes at minimum: grantee name, project identification number, type of procurement and a general project description will be compiled for quick project reference.

STEP 2 – Solicitation Process – This identifies the method of acquisition to be used for the project in question. There will be three (3) categories to choose from that include:

- a) “The NYSOGS Adult Bus Contract” which is a New York State purchasing schedule reviewed and approved as in compliance with FTA procurement regulations that grantees can utilize if chosen. The current 2012-14 Contract may be viewed at this link: <http://www.ogs.ny.gov/purchase/spg/awards/4052322339CAN.HTM>
- b) “Non-Competitive Solicitation” chosen and used only if a projects cost threshold requires only the acquisition of quotes to satisfy competition.
- c) “Competitive Solicitation” chosen and used whenever a projects cost threshold requires a competitive process be utilized to satisfy competition. This process will have sub-categories associated with it to address the various methods utilized depending on the type of acquisition being performed. Subcategories include:
 - i. Information for Bid (IFB)
 - ii. Request For Proposal (RFP)
 - iii. Piggyback
 - iv. Sole Source
 - v. Qualification Based (Brooks Act)
 - vi. Other _____

STEP 3 – Solicitation Development and Submission - This is the detail sections for the method of acquisition chosen in “Step 2” above. All methods are self contained and provide a comprehensive listing of submissions and requirements necessary to meet compliance and receive approval to move on to “Step 4 - Solicitation and Bid Opening Phase”.

The methods and their order of listing are outlined below. Please refer to the checklist for the comprehensive collection detail contained within each method.

- a) Method 1 - Required Documentation (OGS Solicitation)
- b) Method 2 -Required Documentation (Non-Competitive Solicitation)
- c) Method 3 - Required Documentation (Competitive Solicitation)
- d) Method 4 - Required Documentation (PIGGYBACK Solicitation)
- e) Method 5 - Required Documentation (SOLE SOURCE Solicitation)
- f) Method 6 - Required Documentation (Qualification Based - BROOKS ACT)

NYSDOT approval of “STEP 3 – Solicitation Development and Submission” is required prior to commencing to “STEP 4 – Solicitation and Bid Opening”.

STEP 4 – Solicitation and Bid Opening - The solicitation and BID Opening phase encompasses the Advertising, Opening, Review, Analysis, and the Selection processes of competitive and non-competitive procurements. Detailed and comprehensive execution of this phase can help avoid conflicts that could result in delay or possibly even a re-bid of the entire project.

This Step requires examination of all proposals received for responsiveness to all corresponding instructions, forms, terms and specifications contained in the solicitation necessary to provide a proper evaluation. Failure to do so may affect the evaluation of the Bid.

Some of the review process within this Step includes: Advertisement without geographic preference, approved equals process, pre-bid meetings, opening and recording, proposal review, selection criteria, cost/price analysis, bid tabulation, review of excluded parties list system (EPLS), selection and award,, protests and contract draft to name a few. Please refer to the checklist for the comprehensive collection detail contained within this Step.

NYSDOT approval of “STEP 4 – Solicitation and Bid Opening” is required prior to commencing to “STEP 5 – Award and Contract Administration”.

STEP 5 – Award and Contract Administration - The Project Award and Contract Administration phase encompasses the contract development, contract award, and order to precede portion of procurement. The clarity of work task expectations spelled out within the contract can help avoid conflicts that could result in delay of the project. Some example of expectations include: expected milestones and benchmarks, processes for change orders, and chain of command to be followed. Please refer to the checklist for the comprehensive collection and guidance detail contained within this Step.

NYSDOT approval of “STEP 5 – Award and Contract Administration” is required prior to awarding a contract. Change Orders that may follow award also require NYSDOT approval prior to implementation of change order.

STEP 6 – Project Closeout and Reimbursement – NYSDOT considers a completed contract is one that is both physically and administratively complete. The eventual request for reimbursement will hinge on close-out having occurred in its entirety. A contract is physically complete only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. A contract is administratively complete when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

The closeout of routine purchase orders or contracts will need to ensure that all acquisitions have been inspected and accepted in conformance with the purchase order/contract specifications.

An inspection/acceptance form should be in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. There must also be documentation attesting to final payment by the accounts payable department.

Non-routine contracts for services, construction, rolling stock, etc. - Contracts for personal services, complex equipment, construction, and other one-of-kind items will require a number of steps to affect an administrative closeout. Please refer to the checklist for a more comprehensive listing of what major elements the closeout process might include.

III. EXHIBITS, RESPONSIBILITIES AND DEFINITIONS

NYSDOT also maintains helpful narratives as further guidance to recipients and subrecipients regarding procurement requirements in the form of “exhibits”. Below are brief narratives of each, the actual exhibits may be seen within the procurement checklist here <https://www.dot.ny.gov/divisions/policy-and-strategy/public-trans-respository/procurementchecklist.pdf>

EXHIBITS:

“Exhibit I” - Checklist of Required Federal Clauses and Certifications – This checklist offers a handy reference to required clauses and certifications to be contained within a contract as applicable to a specific projects type and method of procurement. It’s associated with projected cost is the final factor.

“Exhibit II” - Written Record of Procurement History Best Practices - The Department maintains, and requires their subrecipients to maintain, records detailing the history of all FTA related procurements that are either requested by the Department or carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible.

“Exhibit III” - Evaluation and Selection Criteria - The required feature that principally distinguishes an RFP from an IFB is the listing of evaluation factors. These factors typically include responsibility factors (financial, human, and physical capacity to perform), and technical factors (ability to perform based on information submitted and the relative qualifications of the proposer's personnel). Some criteria also list order of importance, weighting and the scoring methods use in selection.

“Exhibit IV” - Full and Open Competition - The Department conducts all procurement transactions where FTA federal funds are involved, and ensures that those carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible, are in accordance with 49 USC Section 5325(a) and in a manner that provides for full and open competition.

Geographic preference - The Department ensures that all procurements where FTA federal funds are involved, and ensures that those carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible, are conducted in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

“Exhibit V” - Vendor Information Form - After selection of the vendor chosen to award the contract to, the "Vendor Information Form" must be completed and returned to your NYSDOT procurement representative for processing. Failure to return this form complete will delay approval to award the contract.

DESIGNATED BUREAUS RESPONSIBLE FOR PROCUREMENT OVERSIGHT:

NYSDOT-Statewide Planning Bureau

Federal Section 5303 “Metropolitan, Statewide, & Nonmetropolitan Planning Programs”

NYSDOT-Public Transportation Bureau

Federal Section 5304 “Statewide Planning and Research”
 Federal Section 5311 “Rural Area Formula Grants”
 Federal Section 5316 “Job Access and Reverse Commute”
 Federal Section 5317 “New Freedom Program”

NYSDOT-Office of Information Technology Services

All procurements involving technology

NYSDOT-Contract Management

All State led procurements

DEFINITIONS AND OTHER REFERENCES:

Exclusionary or Discriminatory Specifications - The Department does not expend or otherwise use any federal assistance awarded by the FTA to support procurements using exclusionary or discriminatory specifications, in accordance with 49 USC Section 5325(n).

Contract Term Limitation - The Department ensures that all procurements where FTA federal funds are involved, and ensures that those carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible, for rolling stock or replacement parts with a period of performance shall not exceed five (5) years inclusive of options, in accordance with 49 USC Section 5325(e)(1), seven years (7) for rail rolling stock. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception.

Bus Testing (if applicable) - The Department ensures compliance with the requirements of 49 USC Section 5318(e) and FTA regulations on “Bus Testing,” 49 CFR Part 665 and any amendment to these regulations that may be promulgated. As such, all procurements for rolling stock where FTA federal funds are involved will be required to have mandatory certifications that ensure all bus classifications have been STURRA (Altoona) tested, and that prior to any federal funding purchases made, that valid STURRA (Altoona) test reports have been issued.

Award to Responsible Contractors - The Department ensures the award of contracts where FTA federal funds are involved, and ensures that those carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible, only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement, in accordance with the requirements of 49 USC Section 5325(j). Before

awarding to any contractor, the Department will search the federal Excluded Parties List System (EPLS), and for rolling stock, ensure that the manufacturer is listed on the FTA's

most current FFY version of the Transit Vehicles Manufacturer's (TVM) list for eligibility to bid on federally funded transit agency contracts, FTA regulations on the "Participation of Disadvantaged Business Enterprises," 49 CFR Part 26, and any amendment to these regulations that may be promulgated.

FTA Required Clauses & Certifications Implementation - The Department ensures that the proper clauses and certifications are incorporated for eligible FTA assistance program funding. It is the practice of the NYSDOT Public Transportation Bureau to annually update FTA federally mandated clause and certification language produced for the Department, to transmit to our subrecipients and the Office of General Services (OGS), if necessary, for a centralized purchasing contract, and ensure that those carried out by subrecipients under FTA assistance programs for which NYSDOT is responsible, the required FTA clauses and certifications have been incorporated necessary for the eligibility of federally funded purchases with FTA assistance program funds.

IV. CONCLUSION

The overarching goal of these procedures and the referenced checklist is to offer guidance to NYSDOT subrecipients through the procurement process when utilizing federal and state funding; it does not constitute full compliance and local procurement guidelines may supersede federal and state procedures.

Additionally, it offers further guidance to NYSDOT staff, who as a recipient of federal funds, is also tasked with developing the states 5310 Adult Bus contract in cooperation with the NYS Office of General services, as well as other acquisitions utilizing federal funds.